UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No.
v.	)	
	)	Violations: Title 18,
F. DAVID RADLER,	)	United States Code, Sections
MARK S. KIPNIS and	)	1341, 1343, 1346 and 2
THE RAVELSTON	)	
CORPORATION LIMITED	)	

COUNT ONE

The SPECIAL FEBRUARY 2005-2 GRAND JURY charges:

1. At times material herein:

The Entities and Individuals

a. Hollinger International, Inc. ("International") was a Delaware corporation with an office located in Chicago, Illinois. International was a holding company that was publicly traded on the New York Stock Exchange. Through its operating subsidiaries, International owned and published newspapers around the world, including the *Chicago Sun-Times*, *The Daily Telegraph* in the United Kingdom, the *Jerusalem Post* in Israel, and numerous community newspapers in the United States and Canada. International's primary operating subsidiary was Hollinger International Publishing, Inc. ("HIPI"), which owned the subsidiaries that owned and published International's newspapers. International had a Board of Directors and an Audit Committee that met regularly to conduct business. The Audit Committee, which consisted of three independent directors, functioned as International's independent director committee for purposes of reviewing and approving the fairness of transactions between International and its controlling shareholders and/or officers – commonly referred to as "related party transactions."

b. Delaware corporate law imposes fiduciary duties of loyalty, care, and good faith on controlling shareholders. Controlling shareholders seeking to engage in related party transactions with a company under their control must ensure that any such transactions are "entirely fair" to non-controlling shareholders. Furthermore, officers and directors of a Delaware corporation owe fiduciary duties to the corporation and to its majority, non-controlling public shareholders. These fiduciary duties forbid controlling shareholders, officers and directors from usurping corporate opportunities for their own personal benefit, engaging in self-dealing transactions that are not entirely fair to the non-controlling shareholders, or misleading or deceiving the corporation's board of directors.

c. Hollinger Inc. ("Inc.") was a Canadian corporation with its principal office located in Toronto, Canada. Inc. was a holding company that was publicly traded on the Toronto Stock Exchange. Inc.'s primary asset was its interest in International, which it held directly and through various subsidiaries. Throughout the relevant time period, Inc. held less than a majority of International's equity, but still controlled a majority of International's stock voting power. This disproportionate voting power existed because most of Inc.'s shares in International were in the form of Class B common stock that had a 10-1 voting preference over the Class A common shares held by International's public shareholders. Thus, Inc. was the controlling shareholder of International even though it owned a minority of the equity interest. As a controlling shareholder, Inc. had a fiduciary duty of undivided loyalty to International, which among other things, required Inc. to provide fair and honest services to International, to refrain from acting to benefit itself or anyone else at International's expense, and to disclose all material facts to International's independent directors regarding any transactions involving International and Inc.

d. Defendant THE RAVELSTON CORPORATION LIMITED ("RAVELSTON") was an Ontario corporation with its principal office located in Toronto, Canada. RAVELSTON was a privately held corporation, with 98.5 % of its equity owned by officers and directors of International and Inc., and 1.5 % owned by the estate of a former Inc. director. RAVELSTON's controlling shareholder, who controlled RAVELSTON's affairs, was the Chairman and Chief Executive Officer of International and Inc ("the Chairman"). RAVELSTON's principal asset was its controlling interest in Inc., which it held directly and through various subsidiaries, and which at all relevant times exceeded 70 % of Inc.'s equity. Thus, RAVELSTON was the controlling shareholder of International through its controlling interest in Inc. As the controlling shareholder, RAVELSTON had a fiduciary duty of undivided loyalty to International, which among other things, required RAVELSTON to provide honest services to International, to refrain from acting to benefit itself or anyone else at International's expense, and to disclose all material facts to International's independent directors regarding any transactions involving International and RAVELSTON.

e. Defendant F. DAVID RADLER was a Canadian citizen who resided in Vancouver, Canada. During the relevant time period, he often stayed at an apartment in Chicago that was owned by International, and often worked at International's office in Chicago. RADLER, through FDR Ltd., owned approximately 14.2 % of RAVELSTON, of which he was President. RADLER was the Deputy Chairman of the Board of Directors, the President and the Chief Operating Officer of both International and Inc. At International, RADLER's principal duties were to manage the newspaper operations of the company in the United States and parts of Canada. On those occasions when International or its subsidiaries bought or sold newspapers, RADLER often was involved in negotiating the business terms of those transactions. As an officer and director of International, RADLER had a fiduciary duty of undivided loyalty to International, which among other things, required RADLER to provide honest services to International, to refrain from acting to benefit himself or anyone else at International's expense, and to disclose all material facts to International's independent directors regarding any transactions involving International and any of International's officers, directors and controlling shareholders.

f. Defendant MARK S. KIPNIS was a United States citizen and an experienced attorney. KIPNIS has a B.S. degree in accounting and has been an attorney specializing in transactional law since 1974. KIPNIS was Vice President, Corporate Counsel and Secretary of International, and worked at International's office in Chicago. In this position, KIPNIS's duties included: (1) documenting and closing the purchases and sales of newspapers by International and its subsidiaries; (2) preparing International's annual proxy statement, which was distributed to

International's shareholders in advance of International's annual shareholder meeting and which was filed with the United States Securities and Exchange Commission ("SEC"); (3) acting as secretary at meetings of International's Board of Directors and Audit Committee, and as keeper of the official corporate minute books; (4) preparing the agenda and collecting materials for the directors in connection with the meetings of International's Board of Directors and Audit Committee, and distributing the agenda and materials to the directors in advance of the meetings; and (5) presenting all related party transactions to International's Audit Committee, which functioned as International's independent director committee, for its review and approval. As International's in-house attorney, KIPNIS had a fiduciary duty of undivided loyalty to International, which among other things, required KIPNIS to provide honest services to International, to disclose all material facts regarding all related party transactions to International's Audit Committee, and to refrain from assisting others in any breach of fiduciary duty against International.

Ravelston's Management of International

g. The top four executives of International were not employees of International, but rather of RAVELSTON. The services of these executives, along with certain accounting, financial reporting and other administrative functions, were provided by RAVELSTON to International pursuant to a management services agreement between the two companies. The management services agreement, which was signed by KIPNIS on behalf of International, provided that International and RAVELSTON would meet at least annually to determine whether RAVELSTON would continue to provide these services to International and at what fee. The fee was to be determined through negotiations between RAVELSTON and a committee of International's independent directors. In the agreement RAVELSTON represented and promised that it would discharge its duties thereunder honestly, in good faith, and in the best interest of International. The agreement further stated that RAVELSTON would provide the details of any conflict of interest involving RAVELSTON's performance of its management services to the

Secretary of International, namely KIPNIS, whose job and fiduciary duty it was to present all material facts concerning all related party transactions to International's Audit Committee for its review and approval.

h. Through their controlling interest in RAVELSTON, the Chairman and RADLER had a combined ownership interest in Inc. of approximately 62%. Additionally, through their ownership interest in Inc., the Chairman and RADLER had an indirect ownership interest in International of approximately 19%. Thus, despite having only a minority ownership in International, the Chairman and RADLER were able to maintain voting control over International though Inc.'s ownership of International's "super-voting" Class B Common Stock. The result of International's ownership structure was that every $100 transferred out of International and into Inc. would effectively "cost" RAVELSTON's controlling shareholders (the Chairman and RADLER) $19, but give them $62 as Inc. controlling shareholders, thereby tripling their funds at the direct expense of International's non-controlling shareholders. Similarly, every $100 that was transferred out of International and into RAVELSTON again would cost RAVELSTON's controlling shareholders $19, but give them $79. As for funds transferred out of International directly to RAVELSTON's controlling shareholders, they would receive the full amount of the funds, forgoing their 19% equity stake in International. Thus, the Chairman and RADLER were in a position to exert both their management positions and voting control at International to transfer money to themselves, and away from International's non-controlling and public shareholders, at a very low cost given their minority equity stake in International.

Asset Sales and Non-Competition Agreements

i. Starting in May of 1998, and continuing through 2000, International embarked on a business plan to sell off nearly all of its United States community newspaper assets. In May 1998, an International subsidiary sold a publication called *American Trucker* and several other smaller publications to Intertec Publishing Company for a total amount of approximately $75 million ("the *American Trucker* transaction"). In addition, from early 1999 through late 2000, International and its subsidiaries sold virtually all of International's United States community newspapers (except for those in the Chicago metropolitan area), in a series of sales to a variety of purchasers. These transactions were as follows:

Purchaser	Total Amount (approx.)	Closing Date	Referred To Herein As
Community Newspaper Holdings Inc.	$472 million	2/1/99	"CNHI I"
Horizon Publications Inc.	$43.7 million	3/31/99	"Horizon"
Forum Communications Inc.	$14 million	9/30/00	"Forum"
PMG Acquisition Corp.	$59 million	10/2/00	"Paxton"
Newspaper Holdings Inc.	$90 million	11/1/00	"CNHI II"

Newspaper Holdings Inc. was a subsidiary of Community Newspaper Holdings Inc. Horizon Publications Inc. was owned by RADLER, KIPNIS and other International executives. None of the other purchasers had any ownership relationship to or with International.

j. RADLER supervised the negotiations of the business terms of each of the transactions set forth in subparagraph i. KIPNIS participated in the documentation and closing of each transaction.

k. The closing documents for each of the transactions set forth in subparagraph i. included a non-competition agreement signed by International, whereby International promised not to acquire or establish a newspaper within a certain geographic distance from the newspapers it sold for a certain period of time after the sale. It was not unusual for transactions in the newspaper business to include a non-competition agreement signed by the seller. This was so because newspaper purchasers buy not just the trade name of the newspaper, but also its subscriber and advertiser bases. Purchasers often request the seller's agreement not to return to the same area in a short period of time and operate a rival newspaper. For commercial and tax purposes, it is not unusual for the buyer and seller to allocate a portion of the sales proceeds towards the seller's non-competition agreement. The buyer, however, typically does not pay additional consideration for a separate agreement that prohibits the seller's affiliates and officers from personally competing with the buyer.

l. In connection with the non-competition agreements in the transactions set forth in subparagraph i., the fiduciary duty of loyalty owed by RADLER and KIPNIS to International required each of them to use his skill and ability to maximize International's share of the proceeds allocated to the non-competition agreement and to refrain from acting to International's detriment. If one of International's controlling shareholders, officers or directors received a portion of the proceeds allocated to the non-competition agreement, both RADLER and KIPNIS, as well as any other knowledgeable officer, director or controlling shareholder of International, had a fiduciary duty to disclose this fact to International's Audit Committee, so that the independent directors could review the transaction and ensure its fairness to International.

m. In 1996, a tax court in Canada held that, under the facts of that case, non-competition fees were not taxable under Canadian tax law. In December 1999, a Canadian federal court of appeal affirmed this decision. One of RAVELSTON's principals, who also was an officer of both International and Inc., was extremely knowledgeable about tax law. These court decisions created a potential tax benefit for Canadian taxpayers who legitimately received non-competition payments. Several officers of International, including RADLER, were Canadian taxpayers.

<u>General Scheme Allegations</u>

2. Beginning no later than in or about January 1999 and continuing thereafter until at least in or about May 2001, at Chicago, in the Northern District of Illinois, Eastern Division and elsewhere,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, along with others known and unknown to the grand jury, devised, intended to devise, and participated in a scheme to defraud International and International's public shareholders of money, property and their intangible right of honest services, to defraud the Canadian tax authorities of tax revenue, and to obtain money and property from these victims by means of materially false and fraudulent pretenses, representations, promises and omissions. This scheme is further described below.

3. It was part of the scheme that RAVELSTON and its agents, including RADLER ancd others, repeatedly abused their authority and fiduciary obligations as managers of International in order to fraudulently benefit themselves at the expense of International and its public shareholders. On multiple occasions, RAVELSTON's agents fraudulently inserted themselves and Inc. as recipients of non-competition fees that should have, and otherwise would have, been paid exclusively to International. RAVELSTON and its agents failed to disclose their self-dealing to International's Audit Committee, thereby enabling RAVELSTON and its agents to conceal the scheme, continue as International's managers, and quietly siphon away International assets. RAVELSTON's agents also abused their positions as International's managers by fraudulently causing International to mischaracterize bonus compensation payments to them as non-competition fees, in order to defraud the Canadian tax authorities. KIPNIS aided and abetted this scheme by implementing the directives of RAVELSTON's agents and by failing to disclose this misconduct to International's Audit Committee. As a result of this scheme, defendants and their co-schemers fraudulently diverted over $32 million from International, and fraudulently deprived International of its right to receive their honest services.

American Trucker

4. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others defrauded International in connection with the *American Trucker* transaction. On or about May 11, 1998, International (through a subsidiary) sold the *American Trucker* and *Mine and Quarry Trader* publications to Intertec Publishing Corporation ("Intertec") for approximately $75 million. The closing documents provided that $2 million of the sales proceeds was being paid to International as consideration for its assent to a non-competition agreement. RADLER signed the asset purchase

agreement and non-competition agreement on behalf of International. Intertec did not request or receive a non-competition agreement from Inc. as part of the transaction.

5. It was further part of the scheme that in or about January 1999, approximately eight months after the *American Trucker* transaction was concluded, RAVELSTON's agents, including RADLER, decided that they would divert the $2 million that International received for the *American Trucker* non-competition agreement to Inc. Consistent with this decision, RAVELSTON's agents caused the Executive Vice-President of International's Community Newspaper Division to send a memorandum, on January 27, 1999, to the Assistant Treasurer of International on which RADLER was copied. The memorandum falsely stated that the $2 million from the *American Trucker* deal allocated to International's non-competition agreement "was actually for [Inc.] as compensation for the Non-Compete as specified in the *American Trucker* transaction."

6. It was further part of the scheme that on or about February 1, 1999, KIPNIS signed a $2 million check that International issued and sent to Inc. These funds purportedly represented the entire $2 million non-competition agreement allocation from the *American Trucker* transaction to Inc. as compensation for Inc.'s assent to a non-competition agreement. RAVELSTON's agents and KIPNIS knew that Inc. had never signed or been asked to sign a non-competition agreement in the *American Trucker* transaction. Furthermore, Inc. did not present a competitive threat to any of the publications sold in the *American Trucker* transaction, and Inc. did not employ staff who could manage newspaper properties in the United States other than the staff already working for International, which was already subject to the non-competition agreement.

7. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others failed to disclose the $2 million payment from International to Inc. as a related party transaction to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme. The $2 million payment to Inc. was a breach of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from the *American Trucker*

transaction. The $2 million payment was a theft of International's corporate assets and a fraudulent deprivation of honest services by all International agents who were involved. RAVELSTON benefitted by these thefts because it owned a greater percentage of Inc. than it did of International. Thus, by fraudulently moving the non-compete proceeds of the *American Trucker* transaction "up" from International to Inc., RAVELSTON and its controlling shareholders would effectively receive a larger portion of the non-compete proceeds than they would have otherwise received.

CNHI I

8. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others defrauded International in connection with the CNHI I transaction. On or about February 1, 1999, International sold certain of its newspaper assets to Community Newspaper Holdings, Inc. ("CNHI") for approximately $472 million. The deal letter for the CNHI I transaction, signed in December 1998, provided that International would sign a non-competition agreement and that $50 million of the transaction proceeds would be paid to International as consideration for its covenant not to compete.

9. It was further part of the scheme that in or about January 1999, RAVELSTON's agents, including RADLER, decided that Inc. would be inserted as a non-competition covenantor, and that Inc. would receive $12 million of the $50 million allocated to the non-competition agreement (approximately 25%). RADLER and KIPNIS were aware that CNHI had not requested that Inc. be added to the non-competition agreement.

10. It was further part of the scheme that in late-January 1999, only days before the February 1, 1999 closing, KIPNIS inserted Inc. into the closing documents as a non-compete covenantor. The final covenant not to compete falsely stated that CNHI "was not willing to enter into the Exchange Agreement and Lenders are not willing to provide financing to [CNHI] for the acquisition of the Newspapers unless Covenantors execute this Agreement." KIPNIS signed the asset purchase agreement and non-competition agreement on behalf of International, and RADLER signed the non-competition agreement on behalf of Inc. Both KIPNIS and RADLER signed the non-

competition agreements knowing full well that CNHI was willing to enter into the transaction without Inc.'s non-compete agreement.

11. It was further part of the scheme that at the closing of the CNHI I transaction on February 1, 1999, KIPNIS caused $12 million of the transaction proceeds to be wire transferred directly to Inc. instead of International. The $12 million payment to Inc. was a breach of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from the transaction. The $12 million payment was a theft of International's corporate opportunity and a fraudulent deprivation of honest services by all International agents who were involved. RAVELSTON benefitted by these thefts because it owned a greater percentage of Inc. than it did of International. The $12 million payment to Inc. at International's expense was a related party transaction. RAVELSTON, RADLER, KIPNIS and others failed to disclose this related party transaction to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

12. It was further part of the scheme that in February 1999, RAVELSTON's agents caused Inc. to use the $14 million that it had fraudulently obtained in connection with the *American Trucker* ($2 million) and CNHI I ($12 million) transactions to pay down an overdue debt that Inc. owed to International. Thus, by "round-tripping" the funds that they had fraudulently obtained from International, RAVELSTON's agents had effectively caused International to repay itself a significant portion of Inc.'s overdue debt. The $14 million in payments to Inc. at International's expense, and Inc.'s subsequent use of those funds to "repay" International were related party transactions. RAVELSTON, RADLER, KIPNIS and others failed to disclose these related party transactions to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

The Template

13. It was further part of the scheme that, in or about January 1999, RAVELSTON's agents, including RADLER, decided that, in connection with all future sales of International's U.S. community newspapers, Inc. would be inserted as a non-compete covenantor as a matter of course, and would receive 25% of the proceeds allocated to the non-competition agreement in each transaction. This decision, of which KIPNIS was aware and helped implement, was known as the "template." KIPNIS was present at the time the decision to implement the template was made, and characterized it as having been made by "Toronto" – a reference to RAVELSTON's agents based in Toronto, Canada. The decision to initiate the template in all future transactions would effectively siphon off 25% of any proceeds allocated to International's non-competition agreement regardless of whether the buyer requested or valued Inc.'s agreement not to compete. The implementation of the template was a breach of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from these transactions. The decision to create and implement the template, which would result in payments to Inc. at International's expense, also was a plan to engage in a series of related party transactions. RAVELSTON, RADLER, KIPNIS and others failed to disclose the plan to implement the template to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

Horizon

14. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others defrauded International in connection with the Horizon transaction. Horizon was a privately-owned newspaper company in which RADLER and other RAVELSTON agents owned substantial interests. In a transaction agreement dated March 31, 1999, International agreed to sell certain newspapers and specialty publications to Horizon for approximately $43.7 million. RAVELSTON's agents, including RADLER, decided that the amount allocated to the non-competition agreement would be $5 million, and that, pursuant to the template, both International and Inc. would sign the non-

competition agreement, with International receiving $3.8 million of the non-competition allocation and Inc. receiving $1.2 million of the non-competition allocation.

15. It was further part of the scheme that at the closing of the Horizon transaction, on June 30, 1999, KIPNIS helped implement the template by including Inc. in the transaction documents, and causing $1.2 million to be wire transferred to Inc. in August 1999 when Horizon received the funding necessary to close the transaction. KIPNIS signed the asset purchase agreement and non-competition agreement on behalf of International, and RADLER signed the non-competition agreement on behalf of Inc. Thus, in the Horizon transaction, RAVELSTON's agents, including RADLER, had in essence, negotiated an agreement with themselves (Inc.), not to compete against themselves (Horizon), resulting in them paying themselves (Inc.) approximately $1.2 million. The $1.2 million payment to Inc. was a breach of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from the transaction. The $1.2 million payment was a theft of International's corporate opportunity and a fraudulent deprivation of honest services by all International agents who were involved. RAVELSTON again benefitted by this theft because it owned a greater percentage of Inc. than it did of International. The $1.2 million payment to Inc. at International's expense was a related party transaction. RAVELSTON, RADLER, KIPNIS and others failed to disclose this related party transaction to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

Individual Non-Competition Payments

16. It was further part of the scheme that, in the summer of 2000, four of International's officers, including RADLER, decided that, with respect to anticipated transactions with Forum, Paxton and CNHI II, they would insert themselves as individual non-compete covenantors and would divert a portion of the proceeds of each of these transactions to themselves as bonus

compensation. The decision to characterize these payments as "non-competition" payments, as opposed to bonus compensation, was motivated, at least in part, by a desire to defraud the tax authorities in Canada, where legitimate non-competition payments potentially received tax-advantaged treatment. These payments were to be above and beyond the funds allocated to the non-competition agreement in the transaction by the parties, which would continue to be divided between International and Inc. pursuant to the template. This decision, of which KIPNIS was aware and helped implement, was a breach of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from these transactions. RADLER, KIPNIS and others failed to disclose their plan to pay themselves bonus compensation and mischaracterized these payments as "non-competition fees" to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme at International's expense.

Forum and Paxton

17. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others defrauded International in connection with the Forum and Paxton transactions. On or about September 30, 2000, International entered into an Asset Purchase Agreement to sell certain newspapers to Forum Communications Co. for $14 million, $400,000 of which was allocated to non-competition agreements. On or about October 2, 2000, International entered into an Asset Purchase Agreement to sell certain newspapers to Paxton for approximately $59 million, $2 million of which was allocated to non-competition agreements. Pursuant to the template established by RAVELSTON's agents, including RADLER, in both transactions KIPNIS inserted International and Inc. as non-compete covenantors, and proposed that the amount allocated to the non-competition agreement be split 75% to International and 25% to Inc. As in prior transactions, Inc. was included as a non-compete covenantor because KIPNIS, purportedly acting on behalf of International, inserted it as such. Neither Forum nor Paxton ever requested that Inc. be included as a non-compete convenantor.

18. It was further part of the scheme that KIPNIS signed the Forum and Paxton asset purchase agreements on behalf of International, and the non-competition agreements on behalf of both International and Inc. At the closings on or about September 30, 2000 (Forum) and October 2, 2000 (Paxton), KIPNIS caused $100,000 and $500,000, respectively, to be wire transferred to Inc. The decision in the Forum and Paxton transactions to include Inc. as a recipient of 25% of the funds allocated to the non-competition agreement, and the implementation of that decision, were breaches of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from these transactions. The $100,000 and $500,000 payments were thefts of International's corporate opportunities and fraudulent deprivations of honest services by all International agents who were involved. As in prior transactions, RAVELSTON benefitted by these thefts because it owned a greater percentage of Inc. than it did of International. The $100,000 and $500,000 payments to Inc. at International's expense were related party transactions. RAVELSTON, RADLER, KIPNIS and others failed to disclose these related party transactions to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

19. It was further part of the scheme that at the time of the Forum and Paxton transactions, RADLER believed that, consistent with their plan, the four International officers, including RADLER, had been inserted as non-compete covenantors by KIPNIS in the Forum and Paxton closing documents, and that 3 % of the proceeds of each transaction had been set aside to fund the non-compete payments to the four International officers.

20. It was further part of the scheme that, in the spring of 2001, RAVELSTON, RADLER, KIPNIS and others realized that a portion of the proceeds from the Forum and Paxton transactions had not, in fact, been set aside from the transactions to fund the anticipated individual non-compete payments. Moreover, the four International officers, including RADLER, had never been inserted as non-compete convenators in the closing documents. After realizing the "mistake," RADLER examined International's reserve accounts from the Forum and Paxton transactions –

which had closed almost six months prior – and determined that $600,000 could diverted from those reserves and paid to the four International officers, including RADLER, as non-competition payments.

21. It was further part of the scheme that on or about April 9, 2001, RADLER, KIPNIS and their co-schemers caused a subsidiary of International and HIPI to pay a total of $600,000 to the four International officers, including RADLER, as "supplemental non-competition payments." The "supplemental non-competition payments" were made to International officers despite the fact that no individual had signed a non-competition agreement in connection with the Forum or Paxton transactions. These payments were thefts of International's corporate assets and fraudulent deprivations of honest services by all International agents who were involved. The payments to the individuals at International's expense also were related party transactions. RADLER, KIPNIS and others failed to disclose these related party transactions to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

CNHI II

22. It was further part of the scheme that RAVELSTON, RADLER, KIPNIS and others defrauded International in connection with the CNHI II transaction. On or about November 1, 2000, International sold additional newspapers to CNHI for approximately $90 million. Pursuant to the "template" established by RAVELSTON's agents, including RADLER, Inc. was inserted into the CNHI asset purchase agreement by KIPNIS as a non-compete covenantor. The asset purchase agreement, dated September 28, 2000, allocated $3 million of the purchase price to International and Inc.'s non-competition agreements — $2.25 million to International (75%) and $750,000 to Inc. (25%). Inc. was included as a non-compete covenantor because KIPNIS, purportedly acting on behalf of International, inserted it as such. As in the first CNHI transaction, however, CNHI had not requested that Inc. be included as a non-compete covenantor in the transaction.

23. It was further part of the scheme that in or about late October of 2000, several days

before the closing of the CNHI II transaction, KIPNIS, purportedly acting on behalf of International, advised CNHI representatives that International wanted to insert the four International officers, including RADLER, as covenantors to the non-competition agreement (in addition to International and Inc.). KIPNIS further proposed to allocate approximately $9.5 million of the transaction proceeds to the non-competition agreements for the four International officers. RAVELSTON's agents, including RADLER, and KIPNIS were fully aware that the $9.5 million allocated to the individuals as compensation for non-competition agreements would have otherwise been paid to International as proceeds of the CNHI II transaction. RADLER and KIPNIS were fully aware that CNHI had not requested that any individuals be added as covenantors to the non-competition agreement with International. CNHI representatives had not even heard of some of the International officers whom KIPNIS proposed adding as covenantors to the non-competition agreement.

24. It was further part of the scheme that KIPNIS implemented the decision by convincing CNHI to allow the four individuals to be added to the non-competition agreement as covenantors, and modifying the non-competition agreement to reflect this fact. CNHI did not care if the number of covenantors was increased, so long as doing so did not increase CNHI's purchase price.

25. It was further part of the scheme that at the closing on or about November 1, 2000, KIPNIS signed the asset purchase agreements on behalf of International, and the non-competition agreements on behalf of International, Inc., RADLER and the three other International officers. Although Inc. and the four International officers were added to the non-compete agreement solely at KIPNIS' request, the final non-competition agreement falsely stated that CNHI "was not willing to enter into the Purchase Agreement for the acquisition of the Newspapers unless Covenantor executes this Agreement." KIPNIS signed the non-competition agreement knowing full well that CNHI was willing to enter into the transaction without Inc. or the four individuals' non-compete agreement.

26. It was further part of the scheme that at the closing on or about November 1, 2000,

pursuant to Inc.'s non-competition agreement, KIPNIS caused $750,000 to be wire transferred to Inc. Furthermore, at the closing on or about November 1, 2000, KIPNIS attempted to convince CNHI to wire transfer the $9.5 million non-competition payment directly to the four individuals. CNHI refused, in part because it had never heard of some of the individuals. CNHI, however, agreed to allow KIPNIS to handwrite the names and disbursement amounts for the International officers receiving non-compete payments on the bank's wiring instructions. KIPNIS subsequently arranged for the $9.5 million in non-compete payments to be sent to American Publishing Company, a subsidiary of International and HIPI.

27. It was further part of the scheme that in late November 2000, KIPNIS caused an American Publishing Company subsidiary to issue checks totaling $9.5 million to the four International officers. The decision in the CNHI II transaction to propose Inc. and International officers as recipients of the funds allocated to the non-competition agreement, and the implementation of that decision, were breaches of the fiduciary duty that defendants and their co-schemers owed to International, which required them to seek to maximize the benefit to International from the transaction. The $750,000 payment to Inc. and the $9.5 million payment to the four International officers were thefts of International's corporate opportunity and a fraudulent deprivation of honest services by all International agents who were involved. RAVELSTON and its agents benefitted by this theft directly, and because they owned a greater percentage of Inc. than they did of International. The $750,000 payment to Inc. and the $9.5 million payment to the four International officers were both at International's expense and were related party transactions. RAVELSTON, RADLER, KIPNIS and others failed to disclose these related party transactions to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

February 2001 Payments

28. It was further part of the scheme that, in February 2001, the four International officers, including RADLER, and KIPNIS, fraudulently mischaracterized bonus payments to the four International officers as non-competition payments, for the purpose of defrauding the Canadian tax authorities. The four International officers decided that they would pay themselves, purportedly on behalf of International, a bonus of $5.5 million. The four International officers further decided to label these payments as non-competition payments, rather than bonus compensation, in order to take advantage of the potential tax benefits that genuine non-competition payments received under Canadian tax laws.

29. It was further part of the scheme that KIPNIS helped implement this decision by preparing non-competition agreements between American Publishing Company (an International subsidiary) and each of the four International officers, and then signing the agreements on behalf of American Publishing Company. In the agreements, which were backdated to December 31, 2000, each of the four International officers promised not to compete with American Publishing Company for three years after he left International's employ. These agreements were a contrivance created for the purpose of facilitating and concealing the fraud on the Canadian tax authorities. American Publishing Company was the subsidiary through which International had owned its United States community newspapers outside the Chicago area. By the time these agreements were signed, however, International had sold all of these newspapers but one – a small weekly newspaper in Mammoth Lake, California. International was in the process of attempting to sell that newspaper and had no intent of re-entering the community newspaper business in the United States, and defendants knew that there was no legitimate justification for these non-competition agreements. The four International officers had signed a $5.5 million agreement not to compete in the newspaper business with a company that was, for all intents and purposes, no longer in the newspaper business.

30. It was further part of the scheme that, in or about February 2001, the four International officers and KIPNIS caused an American Publishing Company subsidiary to issue

checks totaling $5.5 million to the four International officers, including RADLER. KIPNIS arranged for the delivery of the checks which, like the non-competition agreements, were backdated to December 31, 2000. The issuance of these checks, as well as the preparation and signing of the fraudulent non-competition agreements, were breaches of the fiduciary duty owed by RADLER, KIPNIS and their co-schemers because they were benefitting themselves to the detriment of International. These payments were fraudulent deprivations of International's right to receive honest services from its officers, directors and controlling shareholder. The payments to the individuals at International's expense also were related party transactions. RADLER, KIPNIS and others failed to investigate and fully disclose the actual nature of these related party transactions to International's Audit Committee, thereby breaching their fiduciary duty, fraudulently depriving International of honest services, and concealing the scheme.

31. It was further part of the scheme that defendants and their co-schemers used the United States mail, commercial interstate couriers and the interstate wires to execute the scheme. For example, KIPNIS sent transaction documents to others by interstate facsimile, e-mail and commercial interstate couriers. Money was wire transferred in interstate commerce. Checks were delivered by commercial interstate carriers. KIPNIS sent out packages of materials to the International Audit Committee by facsimile, e-mail and commercial interstate carriers.

32. It was further part of the scheme that defendants and their co-schemers did misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, acts done in furtherance of the scheme and the purpose of those acts.

33. On or about February 8, 2001, at Chicago, in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be deposited for delivery by an interstate carrier from Chicago, Illinois, an envelope addressed to the Executive Vice-President of Inc. and International in Toronto, Canada, to be sent and delivered by an interstate carrier, namely, Federal Express, according to the directions thereon, which envelope contained Noncompetition Agreements with American Publishing Company to be executed by certain International officers, and approximately $2.9 million in checks as consideration for those agreements;

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

COUNT TW0

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about August 19, 2000, at Chicago, in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be deposited for delivery by an interstate carrier from Chicago, Illinois, an envelope addressed to the attorney for Forum Communications Inc. in Fargo, North Dakota, to be sent and delivered by an interstate carrier, namely: Federal Express, according to the directions thereon, which envelope contained a transaction documents relating to International's September 30, 2000 sale of certain newspapers to Forum, including a Noncompetition Agreement, wire transfer instructions for the Noncompetition Agreement and an Asset Purchase Agreement;

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

COUNT THREE

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about September 5, 2000, at Chicago, in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Nashville, Tennessee, to Chicago, Illinois, by means of wire and radio communications, certain writings, signs, and signals, namely: an e-mail transmission of a draft Asset Purchase Agreement for International's October 2, 2000 sale of certain newspapers to PMG Acquisition Corp. ("Paxton");

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT FOUR

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about October 24, 2000, at Chicago in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted in interstate commerce from Chicago, Illinois, to Charlotte, North Carolina, by means of wire and radio communications, certain writings, signs, and signals, namely: a facsimile transmission wire transfer instructions for the proceeds of International's November 1, 2000 sale of certain newspapers to CNHI;

In violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT FIVE

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about November 21, 2000, at Chicago in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be deposited for delivery by an interstate carrier an envelope addressed to MARK S. KIPNIS, to be sent and delivered by an interstate carrier, according to the directions thereon, which envelope contained a "non-competition" payment in the form of a check made payable to DAVID RADLER in the amount of $4,500,000;

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

COUNT SIX

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about March 1, 2001, at Chicago in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be deposited for delivery by an interstate carrier an envelope addressed to MARK S. KIPNIS, to be sent and delivered by an interstate carrier, according to the directions thereon, which envelope contained Noncompetition Agreements with American Publishing Company executed by certain International officers;

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

COUNT SEVEN

The SPECIAL FEBRUARY 2005-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 32 of Count One of this Indictment as though fully set forth herein.

2. On or about April 9, 2001, at Chicago in the Northern District of Illinois, Eastern Division,

F. DAVID RADLER,
MARK S. KIPNIS and
THE RAVELSTON CORPORATION LIMITED,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, knowingly did knowingly cause to be deposited for delivery by an interstate carrier an envelope addressed to MARK S. KIPNIS, to be sent and delivered by an interstate carrier, according to the directions thereon, which envelope contained "non-competition payments" in the form of checks totaling $600,000;

In violation of Title 18, United States Code, Sections 1341, 1346 and 2.

A TRUE BILL:

____
FOREPERSON

____
UNITED STATES ATTORNEY